

In re Appln. of Savicki, Alan F.
Application No. 10/049,319
Attorney Docket No. 492.216

Remarks

Applicants wish to thank Primary Examiner James Brittain for his time and effort during a telephone conversation with Applicants' attorney Thomas Feix, on March 1, 2005. During the conversation, the following items were discussed: the Office Action dated December 29, 2004, U.S. Patent 5,871,281 to Stolmeier, U.S. Patent 5,020,194 to Herrington, and possible amendments to the claims which are included in this Response.

The Pending Claims

Currently pending are claims 1-17. By this response, claims 1, 3-8, 16, and 17 have been amended. Reconsideration of the pending claims is respectfully requested.

Claim Objections

Claims 3-8 were objected to on formal grounds. The examiner noted that the term "the first flange portion" in each claims lacks clear antecedent basis since it could refer to either the "upper" or "altered" flange of claim 1. In response, claims 3 -8 have been amended to correct "the first flange portion" to read -- the first upper flange portion--. No new matter has been added by these amendments. In view of these amendments it is believed that the objection to claims 3-8 is now overcome.

Summary of the Claim Rejections

Claims 1-10, 13, 14, 16 and 17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Stolmeier et al. (US 5,871,281) in view of Herrington et al. (US 5,020,194). Claims 11 and 12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Stolmeier et al. (US 5,871,281) in view of Herrington et al. (US 5,020,194) as applied to claims 1 and 9, and further in view of Porchia et al. (US 5,664,299). Claim 15 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Stolmeier et al. (US 5,871,281) in view of Herrington et al. (US 5,020,194) as applied to claims 1 and 9, and further in view of Herrington et al. (US 5,007,143).

Discussion of the Claim Rejections

Applicants respectfully submit that the primary relied on reference to Stolmeier is insufficient, either alone or in combination with Herrington '194, to render obvious claim 1. To render a claim obvious, the prior art reference as modified must teach or suggest all the elements of the claim. See, e.g., M.P.E.P. § 2143. Stolmeier, however, does not teach the feature as recited in amended claims 1, 16 and

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17 that the first length of the first upper flange portion is continuous and spans the entire longitudinal x axis of said first fastening strip. The altered flange portion is formed in the second length of the upper flange portion near the first end. The second length of the upper flange portion extends inward generally along the transverse y axis. The altered flange portion forms a discontinuity in the fastening strips which prevents the separator from deoccluding the closure elements on the fastening strip.

In the closure device of Stolmeier the upper flange portion of each fastening strip is notched in a manner that removes substantially all the material of the upper flanges above the closure elements, including both the upwardly extending first length portion and inwardly extending second length portion of the respective upper flange portions. As is seen in Figs. 7 and 11 of Stolmeier et al. '281, the separator has a wide point that extends well beyond the normal occluded position of the vertically upright length portions of the upper flanges. Thus, without the provision of the notch in both the vertically upwardly extending first length portion and inwardly extending second length portion of the respective upper flange portions, the separator would still act to deocclude the fastening strips. Herrington '194 discloses to form longitudinal slits 15a and 16a in the vertically extending portions of the upper flanges at the end where the slider is parked to allow the rib and groove closure elements to interlock fully. As in Stolmeier, the width of the separator is such that it extends well beyond the normal occluded position of the vertically upright length portions of the upper flanges thus making it necessary to notch or slit the vertically extending portions of the upper flanges in order to diminish the opening force of the separator in this region.

As discussed with the examiner during the March 1, 2005 telephone call, one advantage of the instant invention is that the altered flange portion is not ordinarily conspicuous upon casual inspection by a user since the altered flange portion does not remove material from the generally vertically extending first length of the upper flange portion. In contrast, the notch 38 of Stolmeier is clearly noticeable as substantially the entire upper flange above the closure elements is removed. Likewise, the longitudinal slit structure 15a and 16a formed in the vertically extending portion of the upper flange in Herrington '194 is very noticeable. From a consumer perspective, noticeable notches and/or slits in the upper flange portions of a slider bag are not preferred as consumers may believe the bag will leak.

Another advantage afforded by applicant's invention is that by deforming the upper flange by flattening, there are no slug removal issues during manufacture. When the upper flanges of a bag are notched during manufacture, the notched material or "slug" can fall into the bag. The slug must be removed prior to packaging of the bags. Various steps can be taken to prevent slugs from entering the bag during manufacture (e.g., use of a vacuum to suck the slugs from the bags), but such steps merely add to the overall cost and complexity of manufacture.

Claims dependent upon a claim that is not anticipated by a reference cannot be rejected under 35 U.S.C. § 102(b) and claims dependent upon a claim that is not obvious cannot be rejected under 35

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U.S.C. § 103. See, e.g., *RCA Corp. v. Applied Digital Data Systems*, 221 U.S.P.Q.2d 385 (Fed. Cir. 1984); *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Since none of the cited references render independent claim 1 anticipated or obvious, dependent claims 2-15 are likewise patentable.

Conclusion

The application is considered in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Finally, while no fees are due, the Commissioner is hereby authorized to charge any additional fees or credit any overpayment associated with this communication to Deposit Account No. 03 2270.

Respectfully submitted,

Date: March 14, 2005

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